



The International Brotherhood of Teamsters

Testimony before the

Committee on Transportation and Infrastructure's

Subcommittee on Railroads, Pipelines, and Hazardous Materials

On

**"Reducing Regulatory Burdens and Ensuring Safe Transportation of
Hazardous Materials"**

April 12, 2011

**Prepared by:
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Safety and Health Department**

**International Brotherhood of Teamsters
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Mr. Chairman, Ranking Member Brown, and Members of the Subcommittee:

My name is LaMont Byrd, Director of Safety and Health for the International Brotherhood of Teamsters (IBT). We welcome the opportunity to comment before the Committee on Transportation and Infrastructure's Subcommittee on Railroads, Pipelines, and Hazardous Materials concerning the "Reducing Regulatory Burdens and Ensuring Transportation of Hazardous Materials". We recognize the need for comprehensive hazardous materials regulations that include language that ensures the strong enforcement of the rules, clearly defines regulatory jurisdiction, and provides for safety and security training of workers who are involved in hazardous materials transportation activities. We are particularly concerned with strengthening hazardous material transportation safety in the tank haul industry, and support the Notice of Proposed Rulemaking to protect workers who load and unload cargo tanks. We also support the proposed rule concerning Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids.

The IBT represents approximately 300,000 workers in the United States who are involved in the transportation of hazardous materials including: tank truck drivers who transport bulk shipments of hazardous materials in quantities of up to 10,000 gallons; drivers and dock workers in the freight industry; drivers and warehouse workers in the hazardous waste transport industry; solid waste drivers; drivers and workers in the building and construction materials industry; airline pilots; and members who are employed in the public sector, including law enforcement and emergency medical personnel, who are responsible for responding to traffic accidents that could involve the release of a hazardous substance.

This International Union is very concerned about the health, safety, and security of our membership and that of the general public that shares the roads and highways with our members. Our comments will focus on the following areas:

- Training for Hazardous Materials Workers and Emergency Responders
- OSHA Jurisdiction
- Transportation of Lithium Batteries on Aircraft
- Requirements for Special Permits

Training for Hazardous Materials Employees and Emergency Responders

It is critical that hazardous materials workers be provided with comprehensive worker safety and security training to enable these workers to protect themselves from the hazards that are inherent in handling, loading, and unloading hazardous materials. Likewise, it is essential that emergency responders, who may be called to the scene of a hazardous substance release, should receive a level of training that allows them to protect themselves, nearby persons, property, and the environment. Therefore, the Teamsters Union supports Operations Level Training for emergency responders. The Union with the assistance of our training centers, and funding from several sources, developed a comprehensive hazardous materials / hazardous waste training program for our members and other transportation workers. This program is discussed in greater detail below. As we have worked with many of our members who are regularly involved in loading, unloading, handling, and transporting hazardous materials as part of their normal work responsibilities, it is clear that many employers are providing training that may technically comply with the minimal training requirements as set forth by the DOT. However, the training does not provide the workers with the necessary information and understanding to enable them to protect themselves, their coworkers, and the environment from the hazards

associated with working with hazardous materials. Our members report that the training provided by their employers may consist simply of providing the workers with handout materials or a short video that they must review on their own time with no opportunity for questions and answers. In addition, the training may be generic so as to not address the site-specific needs of workers to avoid hazards in a particular workplace. We think that many employers, faced with a severe economic crisis are opting to either eliminate training programs or do the absolute minimum with respect to providing hazardous materials safety training. Often times, management's position is that the workers should feel fortunate to have a job.

The IBT provides hazardous materials training to our members and other workers through the Safety and Health Department's Worker Training Program in conjunction with Teamster Training centers that are located throughout the United States. The target audience for training provided through this program includes truck drivers in tank haul and freight operations, dock workers, construction workers, and warehouse workers. We also occasionally train airport workers, rail workers, and management representatives. The training is funded by training grants that the IBT receives from the DOT Pipeline and Hazardous Materials Safety Administration (PHMSA), National Institute of Environmental Health Sciences (NIEHS), and from cent-per-hour contributions that are obtained through collective bargaining with employers that are signatory to joint labor – management training trusts.

The DOT PHMSA awarded the IBT \$750,000 to conduct a Hazardous Materials Instructor Training (train-the-trainer) program for hazardous materials employees. This training is conducted by IBT Master Trainers (Mentors) who were familiarized with the program's goals and objectives, curricula, and administrative procedures prior to commencing the train-the-

trainer sessions. To successfully complete the train-the-trainer course, aspiring trainers must complete a pre-requisite 8-hour course to familiarize the participants with the hazardous materials regulations and requirements. The trainers must then successfully complete a 48-hour Train-the-Trainer course that is classroom based and subsequently teach at least one 8-hour basic course while being monitored and evaluated by Mentors and IBT Worker Training Program staff. The target audience for the 8-hour basic course is typically rank-and-file co-workers of the new instructor, supervisors, or other management personnel, and the course is normally held at either a local union hall or at a site provided by a hazardous materials employer. For the current grant year that commenced on October 1, 2010, the DOT HMIT program trained 21 trainers, 60 rank-and-file hazardous materials employees; and 28 instructors from the previous grant year have received refresher training. It should be noted that the rank-and-file employees who receive training in the program will do so as students of the new instructors who are completing their practical training prior to becoming a fully certified instructor.

The response that the program has received from the new instructors and from employers who have either participated in the program or allowed their hourly hazmat employees to be trained in the program has been very positive. Individuals who received training through our program report the following:

- Secured a job that involved workplace safety and health
- Had their job responsibilities increase as a result of receiving the training
- Joined a workplace safety and health committee
- Answered questions that co-workers had relative to hazardous materials
- Responded to hazardous materials releases
- Helped to prevent a workplace accident

Based on our experience providing this training, the program is successful in that it provides workers with additional safety and health knowledge, and it adds value in the workplace as trained workers have greater safety and health awareness and can consequently, work more safely.

The NIEHS funded program is primarily focused on training workers who are responsible for remediating hazardous waste sites, transporting hazardous waste and hazardous materials to disposal sites, and responding to emergency releases of hazardous materials. This program includes a 4-hour hazardous materials transportation course that is conducted as a module in a comprehensive 40-hour course that complies with the training requirements for the OSHA HAZWOPER Standard and DOT hazardous materials regulations and an 8-hour safety and security course for drivers who transport hazardous materials and other products to and from ports. During the current grant year that commenced on September 1, 2010, the program trained 115 workers in the 4-hour awareness level course and 207 workers in the 8-hour safety and security course.

The Teamsters Union provides Operations level training for emergency responders. Our training course is 16 hours rather than the 8 hours required by regulation. The primary training audience for this course includes hospital staff (nurses, house-keepers, drivers, physicians); fire fighters; police officers; and public health officers. Workers in these professions are likely to encounter hazardous materials releases or will provide care to individuals who were exposed to hazardous materials and may have contamination on their bodies or clothing. The IBT Worker

Training Safety Program also provided 552 workers with forklift safety training and 370 workers with training on load securement (blocking and bracing).

OSHA Jurisdiction

The IBT is aware of previous industry efforts to eliminate OSHA authority to protect workers who load, unload, and handle hazardous materials as part of their job responsibilities. This is an extremely critical issue for the Union as we recommend that any such attempts by industry during this reauthorization process be rejected. OSHA is clearly best suited to protect the health and safety of workers who perform the previously mentioned work activities.

It should be noted that in 1994, Yellow Freight Systems (now Yellow-Roadway), our largest LTL carrier, which employed up to 40,000 Teamster members before the economic downturn, was involved in a case that went to the Occupational Safety and Health Review Commission regarding hazardous materials related citations, that OSHA issued to the carrier. In that case, OSHA concluded that the carrier did not comply with the standards concerning emergency response procedures for emergency releases of hazardous materials, including those related to providing personal protective equipment and training to employees who were involved in the response to such incidents. The carrier argued that OSHA did not have jurisdiction due to 4(b)(1) provisions pursuant to the Occupational Safety and Health Act of 1970, concerning preemption. However, the Commission ruled that OSHA did, in fact, have the authority to enforce its regulations and standards to regulate safety and health in the trucking industry.

This decision provided the Union with leverage and the carrier with the impetus to incorporate comprehensive language into the National Master Freight Agreement (NMFA), and

other carriers that were signatory to the agreement concurred. Consequently, the IBT and the carriers that are signatory to the NMFA are bound by both regulatory requirements and contractual requirements to comply with the safety and health provisions regarding hazardous materials, as promulgated by both OSHA and the Department of Transportation.

A similar situation occurred involving our members who are employed at United Parcel Service (UPS). There were several incidents involving drivers and package handlers who encountered unlabeled or improperly labeled packages containing hazardous materials and consequently experienced serious injuries. Although the quantities of hazardous materials being transported through the UPS system did not require placarding per DOT regulations, there was sufficient materials present to cause injuries to workers and in some instances, evacuation of work areas and facilities. OSHA cited the company for failure to comply with the hazardous materials handling and spill response requirements. The parties were able to resolve the citations by signing a settlement agreement that required UPS to implement a comprehensive hazardous materials handling and hazardous materials spill response procedures in their facilities. Again, the IBT worked with the employer to incorporate provisions within the settlement agreement into the National Master UPS Agreement that currently covers approximately 240,000 members. This language, in addition to rules enforced by OSHA, provides our members with needed protection during their hazardous materials loading, unloading, and transporting activities.

Last year, OSHA cited one of our employers for failure to provide training and personal protective equipment to transportation workers who were involved in the handling and shipping of packages that contained mercury. During the transport process, packages were damaged and mercury spilled in the facility. Although OSHA determined that the hazardous materials workers

involved experienced minimal exposures, and likely had no adverse health consequences, the incident could have been much worse and resulted in injuries or occupational illnesses to those exposed workers. Consequently, OSHA penalized the carrier for failure to comply with applicable rules governing training, personal protective equipment, and spill response.

Therefore, based on our experience working with OSHA concerning hazardous materials related issues, the agency has the experience, commitment, and track record to effectively protect transportation workers who are involved in the movement of hazardous materials. We would unequivocally recommend to the Subcommittee that OSHA retain its jurisdiction to protect these workers, our members.

Lithium Batteries

There is much concern about the hazards associated with transporting lithium batteries on aircraft. In 2005, the Department of Transportation promulgated a rule that prohibits the bulk shipment of lithium batteries in the cargo hold of passenger aircraft. The National Transportation Safety Board, in 2007 and 2008, issued a total of eight safety recommendations subsequent to a hazardous materials incident involving a cargo aircraft that was transporting bulk lithium batteries. The IBT agreed with the NTSB recommendations to address the dangers associated with the transport of lithium cells and batteries in aircraft. The Teamsters Union currently represents 2550 air cargo pilots at 15 different cargo airlines throughout the United States and is particularly concerned about the stowage of lithium cells and batteries aboard aircraft. Limiting stowage to crew-accessible locations is essential to protecting the crewmembers from certain disaster should a fire occur onboard the aircraft. With no way to access an area where an explosion and/or fire could erupt, and no certainty that the crew could

land the airplane quickly, we think it is absolutely necessary that short of a fire suppression system or storage in fire resistant containers, lithium batteries be stored in crew-accessible locations. It is equally important to establish load limits on board the aircraft. The proper identification, labeling and packaging requirements for lithium cells and batteries are also very important in protecting transportation workers, airline crews and the traveling public from these potential dangers.

We would also like to take this opportunity to advise the Subcommittee that we do not support the amendment to the Federal Aviation Authorization bill that essentially prohibits the Federal Aviation Administration (FAA) from promulgating or enforcing regulations regarding transportation of lithium batteries by aircraft, if the regulation(s) are more stringent than the International Civil Aviation Organization (ICAO) standards. The IBT believes that the current regulations that are more stringent than ICAO standards should be retained and enforced. It should be noted that there is a proposed regulation that is currently under review at the Office of Management and Budget (OMB) concerning the air transport of lithium batteries that is more stringent than the ICAO standards. The IBT supports this proposed rule. We believe that this regulation is necessary to ensure the protection of airline workers from recognized and documented hazards associated with transporting lithium batteries. Therefore, there should be no obstructions to promulgating and enforcing these rules.

Special Permits

The Teamsters Union has always been concerned about the issuance of special permits, especially relating to the transport of hazardous materials. In many cases, special permits are routinely renewed or modified without adequate review. In some cases, these permits have been

granted to umbrella groups for an entire specialized industry (party status), without examination of specific carriers involved. It is only common sense that the safety history of a carrier should be examined and a determination made that there is not a history of accidents or incidents that would preclude the carrier from initially receiving a permit or obtaining a renewal or modification. For these reasons, we strongly support the recommendations made by the Department of Transportation's Office of Inspector General concerning revisions to the permitting process.

The IBT commends this Committee's concern about the safety and security of the travelling public and hazardous materials workers. As the amount of hazardous materials being transported in our Nation's transportation supply chain increases, so does the risk to our safety and security. Enhancing the federal hazardous materials laws and reauthorizing the DOT's Hazardous Materials Safety Program are important steps that this Congress can take to protect hazardous materials workers, the general public, and the environment. We look forward to working with you on this important endeavor, and I am pleased to answer any questions you may have.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: LaMont Byrd

(2) Other than yourself, name of entity you are representing:
The International Brotherhood of Teamsters

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

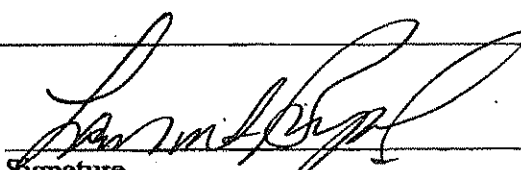
☒ **YES**

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

GRANT AWARDED FROM	CFDA #	GRANT AWARD NUMBER	BUDGET PERIOD	AWARD AMOUNT
National Institute of Environmental Health Services (NIEHS)	93.701	3 U45 ES014084-05S1	9/06/09 - 7/31/11	\$628,000.00
National Institute of Environmental Health Services (NIEHS)	93.142	2 U45 ES014084-06	8/01/10 - 7/31/11	\$1,888,454.00
National Institute of Environmental Health Services (NIEHS)	93.142	2 U45 ES014103-06	9/01/10 - 8/31/11	\$677,326.00
U.S. Department of Transportation (DOT)	20.703	HM-HMI-0017-11-01-00	10/01/10-9/30/11	\$750,000.00


Signature


Date

LaMont Byrd

CURRENT POSITION	Director of Safety and Health, International Brotherhood of Teamsters 25 Louisiana Avenue, N.W. Washington, D.C. 20001
CERTIFICATION	Certified Industrial Hygiene in Comprehensive Practice Cert.# 7622,CP
EDUCATION	East Carolina University, B.S. (Environmental Health), 1982; University of Cincinnati, M.S. Industrial Hygiene, 1990
PROFESSIONAL EXPERIENCE	Senco Products, Industrial Hygiene Technician, 1989 – 1990 International Brotherhood of Teamsters Industrial Hygienist 1990 – 1995 International Brotherhood of Teamsters Worker Training Program, Principal Investigator 1995 – 1996; International Brotherhood of Teamsters, Director of Safety and Health, 1996 – Present
AFFILIATED SOCIETIES:	Member, Academy of Industrial Hygiene (1998 – Present), American Industrial Hygiene Association (1992 – Present), National Advisory Committee on Occupational Safety and Health (1999 – 2001); Member, American Society of Safety Engineers; Past Member, Board of Directors, Academy of Industrial Hygiene; Past Member, American Industrial Hygiene, Ethics Committee; Member, Motor Carrier Safety Advisory Committee (2010 – Present)

Primary Work Activities

Mr. Byrd is actively involved in developing the IBT's safety and health related policies. He is also responsible for managing a staff of technical professionals who provide technical and regulatory support to rank-and-file Teamster members, IBT Trade Divisions, and Local Union Affiliates on issues including but not limited to, transportation safety, occupational safety and health, drug and alcohol testing, and worker safety and health training. In addition, Mr. Byrd works closely with IBT Trade Division leadership during collective bargaining and various organizational initiatives. He also serves as the Principal Investigator for the IBT Safety and Health worker training program.